### PLANNING COMMISSION



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### **DOWNTOWN DENSITY BONUS**

My name is Stuart Harry Hersh, and like most in Austin, I rent. I am here to ask you to reject the \$10/\$3 consultant recommendation for a recalibrated Downtown Density Bonus for the following reasons:

- 1. Like its predecessor, it would produce no on-site affordability or fee-in-lieu payments by applicants seeking to increase residential density through increased height and/or increased floor-to-area ration.
- 2. No downtown developer that spoke throughout the stakeholder process has declared otherwise.
- 3. It encourages hotel development instead of increased residential density because of a fee-in-lieu exemption.
- 4. It encourages office/retail development instead of increased residential density because of a fee-in-lieu exemption.
- 5. It encourages owners to either build with their current entitlements or not improve their property at all if they are interested in residential development.
- 6. It fails to change housing affordability on-site goals to 50% and 30% renters, the poorest among us.
- It fails to create a Downtown Housing Trust Fund for strategic housing investment either downtown or within five miles of downtown on sites located close to public transportation.
- 8. It will result in no increase in local funding in 2013-2014 or 2014-2015, the last two budgets to be approved by the current City Council.

I urge you instead to adopt the alternate code amendments I provided you during Citizen's Communications at your May 28, 2013 meeting (and I supply you again tonight) for the following reasons:

- It allows applicants to receive the residential density bonuses they seek through an administrative process while producing increased revenue for downtown or close to downtown affordability at both the building permit application stage and the property tax assessment stage.
- 2. It enhances Austin's ability to have more residential density in a neighborhood that supports it.
- 3. It creates a new local funding mechanism to support either deep levels of rental affordability downtown or in neighborhoods close to downtown.

Thanks for your consideration.

Stuart Harry Hersh, 1307 Kinney Avenue #117, Austin, TX 78704-2279

shersh@austin.rr.com (512) 587-5093 (cell)

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### DOWNTOWN HOUSING AFFORDABILITY RECALIBRATION

### Goals:

- Adopt a density bonus for the Downtown Planning Area that will encourage more people living Downtown or in neighborhoods close to downtown with good access to public transportation
- 2. Identify a funding mechanism to rehabilitate or construct housing that serves eligible renters either in the Downtown Planning Area or within 5 miles of that area.

In order to accomplish these simple goals, the City Council would need to change the housing affordability and density bonus provisions of Ordinances 20071129-100 and 20080131-132. These ordinances have produced no affordable apartments or fee-in-lieu payments to date. Here are the changes that need to be made to achieve these goals:

- Change on-site affordability goals Downtown (including Rainey Street) from 80% MFI rental or 120% MFI homeownership to 30%/50% MFI rental, because that is the greatest need for the poorest among us
- 2. Make the on-site affordability period 99 years
- Instead of waiving fees enumerated in these ordinances in a manner inconsistent with S.M.A.R.T. Housing standards throughout the City, requirement payment of these fees into a Downtown Housing Trust Fund.
- 4. Require all Downtown development receiving additional height and/or floor to area ratio to pay a \$.50 per square foot fee-in-lieu payment if they do not provide 50%/30% MFI on-site affordability for the unconditioned portion of their building (such as parking garages that provide parking beyond code requirements downtown.
- 5. The paid fees would be deposited into the Downtown Housing Trust Fund as receipted and the fee-in-lieu payments prior to initial occupancy.
- 6. The Downtown Housing Trust Fund would be administered by Neighborhood Housing and Community Development and included as part of its annual budget.
- 7. The Downtown Housing Trust Fund would be available for new construction and rehabilitation on downtown sites or sites within 5 miles of downtown within a quarter-mile of pblic transportation.
- 8. The suggested boundaries for the use of the Downtown Housing Trust Fund Ben White on the South; 183 on the east; Loop 1 on the west; 51<sup>st</sup> Street on the north. UNO and Mueller would be excluded.
- 9. Any site applying for Downtown Housing Trust Funds would have to provide at least 10% of its rental housing @ 50% Median Family Income (MFI) and an additional 10% @ 30% MFI.
- 10. The affordability period for Downtown Housing Trust fund sites would be 99 years.

This sets the stage for strategic discussions for use of the existing Housing Trust Fund for home repair of owners at 50%/30% MFI, and a more robust discussion of enhanced funding related to Ed Van Eeeno's memo to Council on 1/29/13. Proper calculations on the PUD ordinance could also be a related topic for further discussion on how to build the existing city-wide Housing Trust Fund.

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June 11, 2013

City of Austin Planning Commission 301 W. Second Street Austin, Texas 78701

RE: June 11, 2013 Agenda Item C-1 (Downtown Density Bonus Program)

Dear Chairman Anderson and Members of the Planning Commission:

This letter concerns your Item C-1 on today's agenda (the Downtown Density Bonus Program) and expresses the initial concerns of the Real Estate Council of Austin (RECA) with the work done by the City's consultants, HR&A Advisors. To start, we want to point out that since no backup was posted for this item, we and the other members of the public are unsure of what will actually be presented tonight for your consideration. Nevertheless, we wanted to not delay letting you know our concerns.

The City's proposed density "bonus" program runs counter to the goal of density. Though density is a stated goal of the Austin City Council, this program is based on the premise of discouraging (or at least putting up barriers) to dense development. If we continue down the path of such programs, it is critical that a balance is struck, airing on the side of a conservative, lower fee. If the fee is too high, the community will lose out on two benefits: density <u>and</u> affordable housing.

This past Friday, HR&A Advisors shared the results of its economic analysis and recommendation of a density bonus fee-in-lieu requirement. RECA members were in attendance to hear the recommendation, which was \$10 per "bonused" square foot for residential development in the Core/Waterfront District, the Lower Shoal Creek District, and the Rainey Street District. A fee of \$3 per "bonused" square foot was recommended for multi-family and condominium projects in the other areas of downtown.

It was recommended that hotel and office developments not be charged any fee for the "bonus" because such developments could not support such a fee. However, the path to secure the bonus for hotel and office projects was not made clear and several questions remain. Would these types of projects still receive an FAR bump of 50% (e.g., 8:1 to 12:1) if they meet the gatekeeper requirements? How would a project seek to go beyond that, for instance to obtain an FAR of 25:1, as is permitted under the Downtown Austin Plan for some parts of downtown? Additionally, the way in which mixed-use projects secure additional entitlements under this new paradigm needs to be clarified.

OFFICERS

Nikelle S. Meade, President KC Willis, Vice President Brian Cassidy, Secretary Jeremy Smitheal, Treasurer Brian Cassidy, Chair Business MPAC Keith Jackson, Chair Good Government PAC

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98 San Jacinto Blvd. Suite 510 Austin, TX 78701 P: 512.320.4151 F: 512.320.4152 www.recaonline.com



City of Austin Planning Commission June 11, 2013 Page 2

In addition to the amount of the fee, RECA stakeholders had serious concerns about including the Rainey Street District in the same category as the Core/Waterfront and Lower Shoal Creek Districts. We request that it be removed from the \$10 category into the \$3 category. The average sale price for residential units in the Rainey Street District is \$100 per square foot less than similar buildings in the Core/Waterfront (e.g., Shore/Milago (\$350/ft.) vs. Spring/360 (\$450/ft.)). Also, the rental rate is trending \$.50 per square foot per month less than similar rental units in the Core/Waterfront. With these lower values, it is not justifiable to impose the same tax on the bonused portion of such developments in the Rainey Street District.

For the Core/Waterfront and Lower Shoal Creek Districts, RECA stakeholders believe that \$5-6 per bonused square foot is a more appropriate figure than \$10 and that only the rentable square footage should be used in the calculation, not gross square footage of the bonused area. The rate of \$10 suggested by HR&A Advisors may make economic sense for projects charging \$600-650 per square foot, as their analysis of post-2009 residential projects exclusively included the W, the Austonian, and the Four Seasons Residences, all high-end luxury residences. HR&A consultants also assumed 30% returns on condominium projects, which RECA members contend is an inaccurate assumption.

It is our opinion that the downtown density bonus program fee-in-lieu suggested by HR&A will essentially preclude more affordable housing from coming online. The absence of housing at a lower price point will threaten the vibrancy and diversity of downtown Austin. A price of \$5-6 per square foot to have a clear path to secure additional entitlements seems more appropriate to our members, and we maintain that density itself is a benefit to the City, just as affordable housing is.

In conclusion, we ask you to vote to recommend that Rainey Street be separated from the Core/Waterfront District and that a fee-in-lieu of \$5-6 be utilized for residential projects in the Core/Waterfront and Lower Shoal Creek Districts. Additionally, we encourage you to direct staff to describe a process by which office and hotel projects can secure additional FAR. Thank you for your consideration of our perspective.

Sincerely,

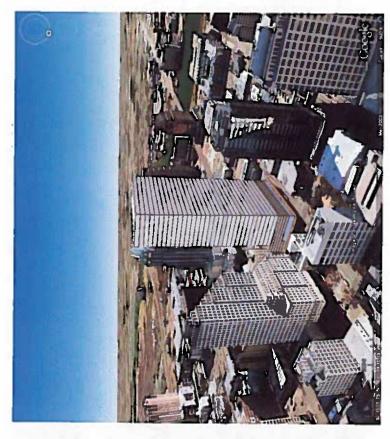
Nikelle Meade President

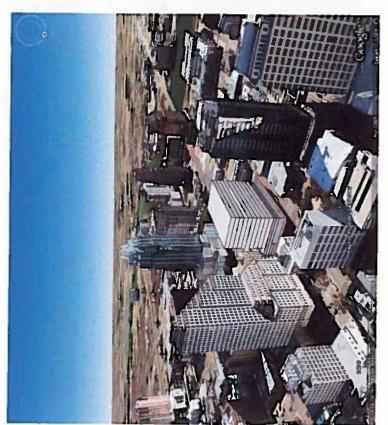
Sibilly S. Heade

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# "STREAMLINED" DOWNTOWN DENSITY BONUS PROGRAM

11 June 2013





### TOPICS:

- 1. BACKGROUND
- 2. SUMMARY OF CODE AMENDMENTS.
- 3. SUMMARY OF RE-CALIBRATION.
- 4. DISCUSSION AND QUESTIONS.



## **BACKGROUND – THE BENEFITS OF DENSITY:**

- Greater tax base.
- Supports enhanced and broader mobility options.
- •Greater financial and environmental sustainability.
- Alleviates pressure for sprawling development.
- Increased vibrancy, diversity of activity, and cultural options.

## **BACKGROUND – CURE COMBINING DISTRICT:**

2000 - 2008: CURE granted in 14 cases.

Those 14 cases: 2,751,662 sf of Bonus Area.

Since 2008 Interim DB Ordinance: 12 CURE cases.

Those cases: 2,567,154 of Bonus Area.

Summary:

• 2000 – present: 26 CURE cases.

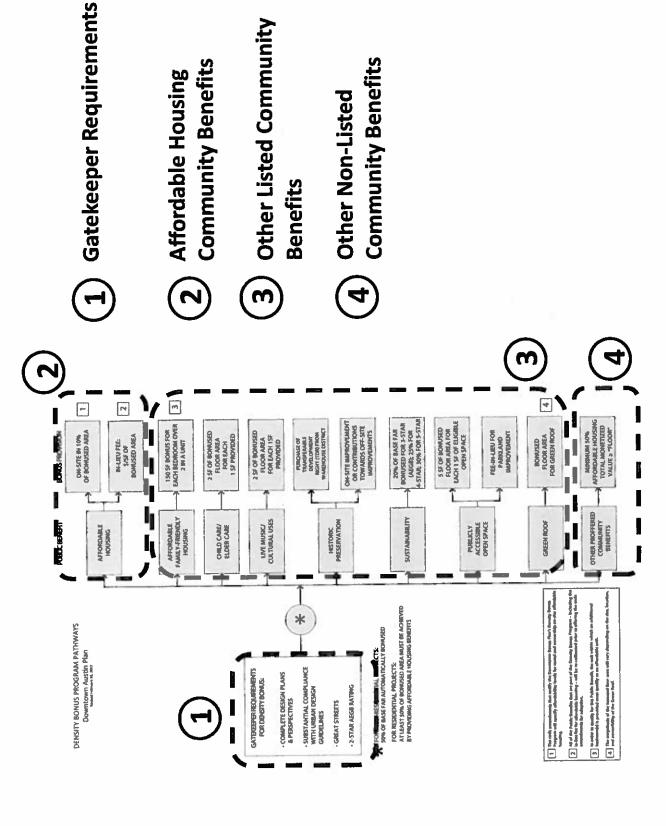
Those cases: 5,318,816 sf of Bonus Area

### **ORDINANCE:**

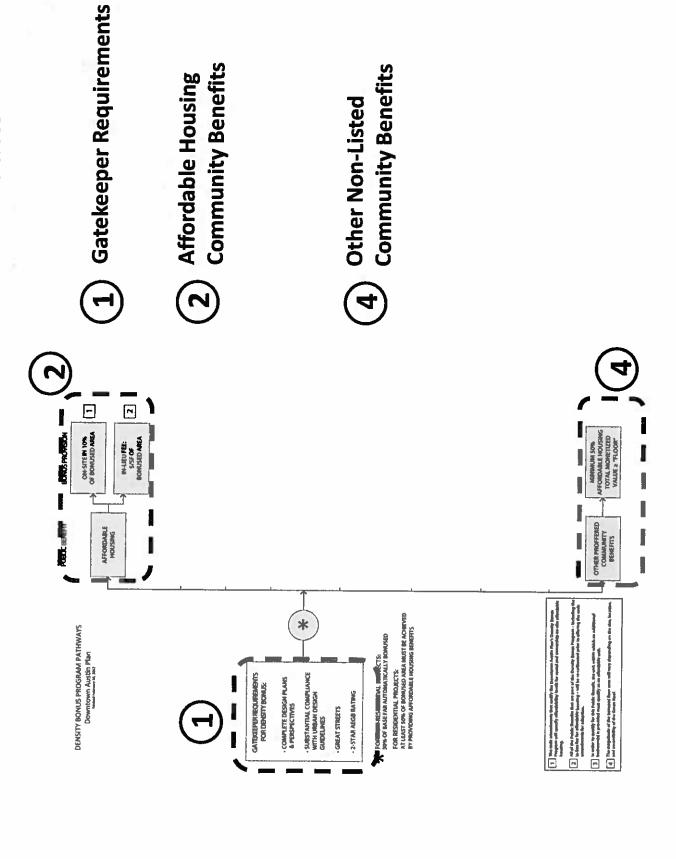
longer be used to modify maximum FAR or maximum height within PART 1: Amends CURE Combining District so that CURE may no the Downtown Austin Plan area.

PART 2: Replaces the "Interim" Downtown Density Bonus Program with this Program. PART 3: Sets the Development Bonus Feee and the amount of square footage granted for on-site affordable housing.

### DAP'S DENSITY BONUS PROGRAM.



## STREAMLINED DENSITY BONUS PROGRAM.



### **ELIGIBILITY** (Sections A and B):

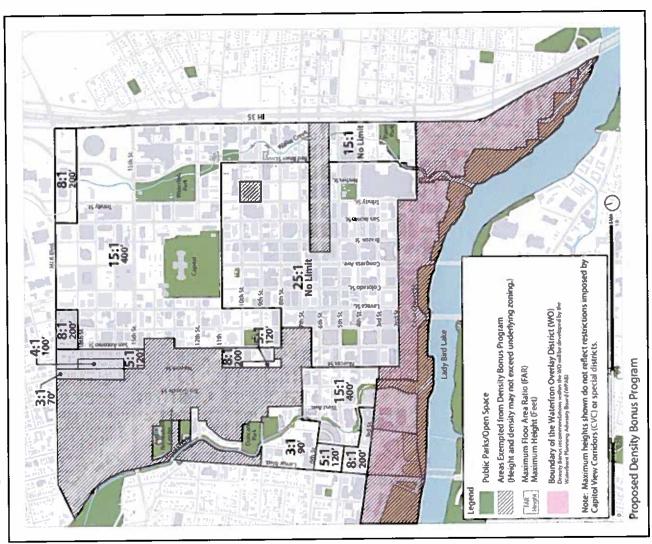
Parcels in some areas

Downtown are not eligible
to participate in the

Density Bonus Program
(see map).

In those areas that are eligible to participate, the Program identified maximum FARs and maximums heights that can be achieved (see map).

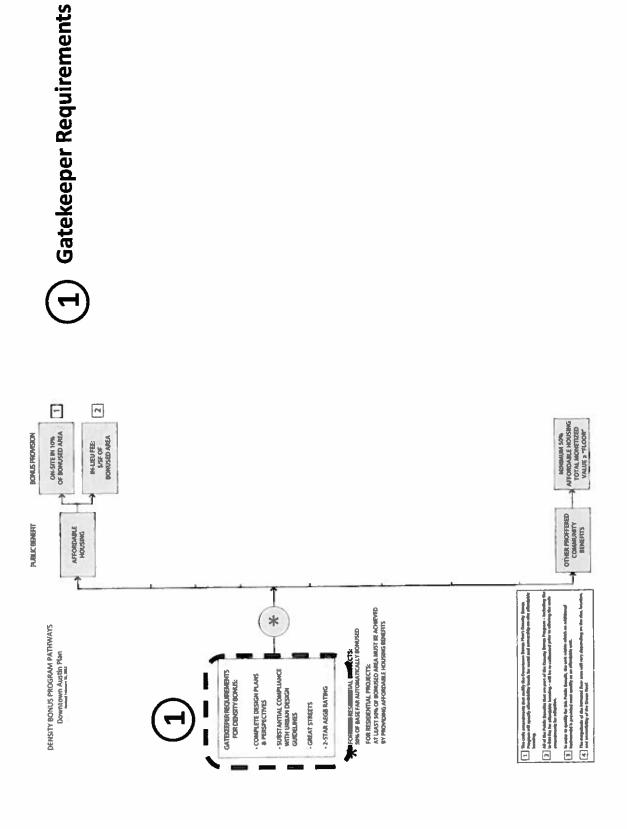
\* Waterfront Overlay



### **KEY TERMS (Section C):**

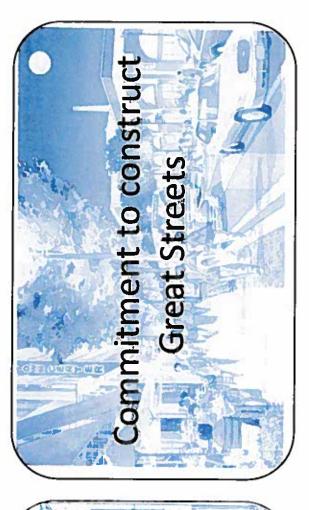
PRIMARY ENTITLEMENT = The height and FAR entitlement that a parcel derives from its current zoning. **BONUS AREA** = The greater of (a) the floor area that exceeds the Primary Entitlement's maximum FAR or (b) the floor area in the portion of the structure that exceeds the Primary Entitlement's maximum height. **DEVELOPMENT BONUS FEE = The fee to be paid to the City for each** square foot of Bonus Area achieved under this program. FEE FLOOR = A dollar amount determined by multiplying the Bonus area (sf) times the Development Bonus Fee (\$/sf).

## GATEKEEPER REQUIREMENTS (Section D1):



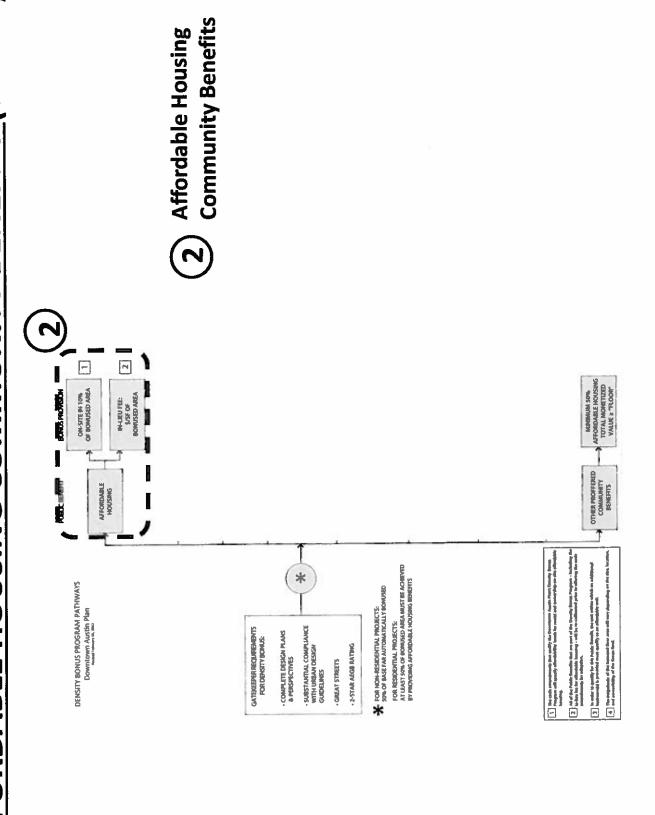
## GATEKEEPER REQUIREMENTS (Section D1):

Submittal of schematic design plans: substantial compliance with Urban Design Guidelines



Commitment to achieve a
2-Star Austin Energy Green
Building Rating

# AFFORDABLE HOUSING COMMUNITY BENEFITS (Sec. E1):



# AFFORDABLE HOUSING COMMUNITY BENEFITS (Sec. E1):

Two types:

- 1. On-Site Affordable Housing Units.
- 2. Affordable Housing Fee.

Every project participating in the Program must achieve at least 50% of its desired Bonus Area by providing Affordable Housing Community Benefits.

Projects that achieve 100% of desired Bonus Area by providing Affordable Housing Community Benefits can be approved administratively.

# AFFORDABLE HOUSING COMMUNITY BENEFITS (Sec. E1):

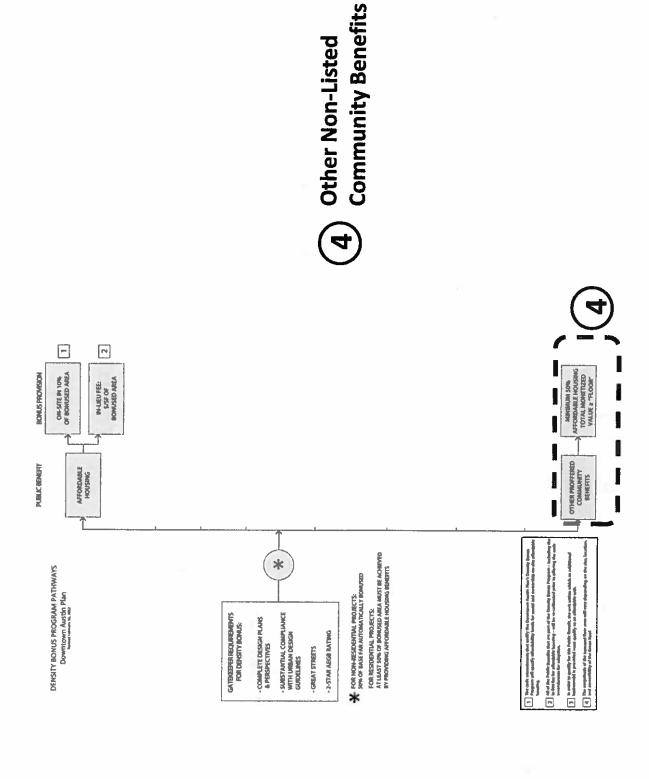
**On-Site Affordability Requirements:** 

Rental Units: For households earning no more than 80% of MFI. Must remain affordable for 40 years following occupancy.

Ownership Units: For households earning no more than 120% MFI. Must remain affordable for 99 years from occupancy.

Affordable Housing Fee: Discussed below.

### OTHER COMMUNITY BENEFITS (Sec. E2):



### OTHER COMMUNITY BENEFITS (Sec. E2):

benefits other than Affordable Housing Community Benefits (after Applies if the project seeks to achieve Bonus Area by providing having met the minimum 50% requirement).

### **Process:**

- Documentation from applicant.
- Director (PDRD) determines whether the proposed benefit qualifies as a Community Benefit.
- Director determines what portion of the cost should be attributed to the Community Benefit. Criteria.
- Director presents recommendation to Planning Commission and City Council for approvals.

### **ENFORCEMENT** (Sec. H):

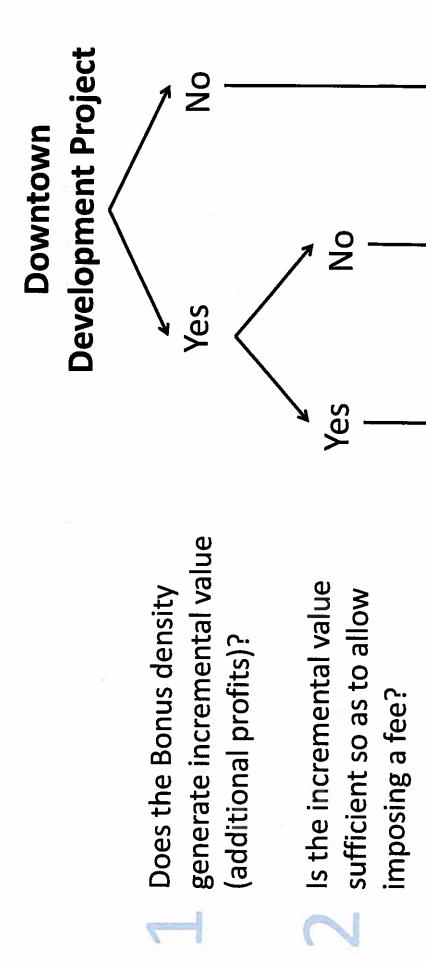
Gatekeeper Requirements) will be memorialized in a Restrictive All of the commitments (including those made as part of the Covenant. The Director will not issue a Certificate of Occupancy until fees have been paid and the Restrictive Covenant executed.

housing), a breach of that commitment will require the project to pay achieve the square footage that was achieved via the no-longera Development Bonus Fee equal to what would be required to For commitments that have a long duration (e.g., affordable provided Community Benefit.

### **Calibration:**

and above any community benefits charged, to incentivize incremental value is produced for private developers, over cost." (Downtown Austin Plan – Density Bonus Program) the additional development in light of increased risk and "For a density bonus program to work effectively... bonuses need to be calibrated so that sufficient

### Calibration - Two Critical Questions:



Yes

Fee-in-lieu on bonused density?

### Re-Calibration Process (2009 vs. 2013):

- development costs, revenues (rents, sales prices, etc.), Re-examinined the Austin real estate economy: land costs, construction costs, soft costs, financing, other operating costs, returns, etc.
- hypothetical projects (different sites, different project Performed pro forma analysis on each on nine types).
- over and above [that Fee], to incentivize the additional incremental value is produced for private developers, Set a Development Bonus Fee "so that sufficient development in light of increased risk and cost."

### Re-Calibration Findings:

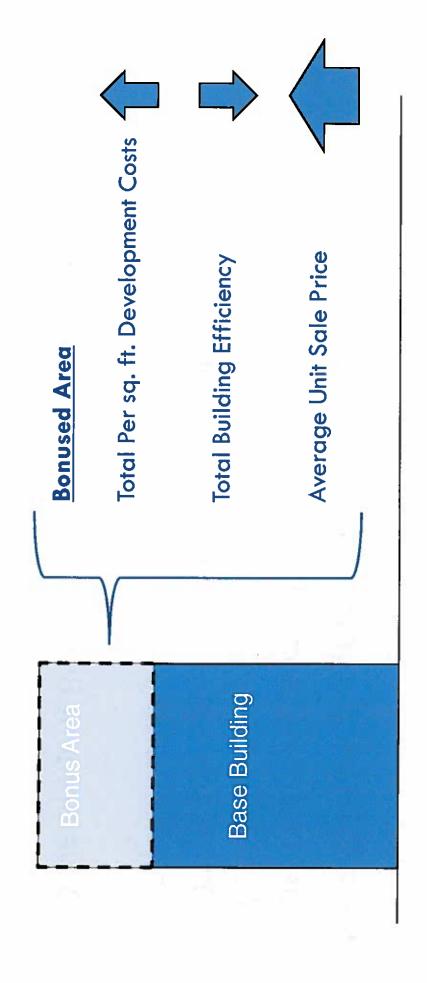
- Greater density does not always lead to higher returns.
- Sometimes the increased returns are outweighed by even greater development costs.
- Sometimes the market will not support more space, or absorption may be slow.
- Some development programs can be achieved within as-of-right zoning.

### Re-Calibration Findings (cont'd):

Residential projects are the one project type that consistently produce higher return by getter larger/taller.

### Re-Calibration Findings (cont'd):

proportionate return on revenue despite an increase Residential projects – Higher floors provide a disin per-square-foot development costs.



### Re-Calibration Recommendations:

- Development Bonus Fee:
- Residential Yes.
- Office and Hotel No. (But must fulfill Gatekeeper Requirements.)
- Development Bonus Fee should vary by Location.

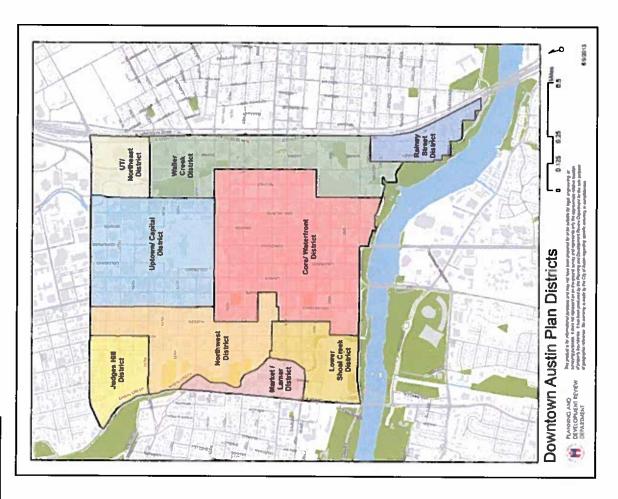
### Re-Calibration Recommendations:

\$10/sf Fee:

Core/Waterfront Lower Shoal Creek

\$3/sf Fee:

All other Districts



### Re-Calibration Recommendations:

- Development Bonus Fee:
- Residential Yes.
- Office and Hotel No. (But must fulfill Gatekeeper Requirements.)
- Development Bonus Fee should vary by Location.
- Potentially link the Fee to an economic indicator so naturally adjusts over time.

## **DEVELOPMENT BONUS FEE (Sec. F):**

## Re-Calibration Recommendations:

Recalibrate the Fee, and if deemed appropriate, adjust it at least every five years (more often if appropriate).

Any proposed adjustment would be presented to City Council as a draft ordinance - for consideration and possible action.

On-Site Affordable Housing: Award 10 square feet of Bonus Area for each 1 sf of On-Site Affordable Housing.

# ADDITIONAL PLANNING COMMISSION QUESTIONS:

- 1. Benefits of Density.
- 2. Summary of CURE combining district cases.
- Magnitude of possible total Bonus Area Downtown. Challenges for calculating:
- Some DB sites limited by Capitol View Corridors.
- Some DB sites too small for significant redevelopment (parking).
- Some sites unlikely to redevelop (historic significance, substantial built value, etc.).
- Some sites not likely to seek maximum bonus.
- Some owners not likely to seek greater entitlements.

# ADDITIONAL PLANNING COMMISSION QUESTIONS:

- 1. Benefits of Density.
- 2. Summary of CURE combining district cases.
- 3. Magnitude of possible total Bonus Area Downtown.
- 4. Increased Bonus Area for increased levels of affordability.

### **NEXT STEPS:**

June 20: City Council Briefing

June 27: City Council Public Hearing and Possible Action

### **QUESTIONS AND DISCUSSION**

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### Anguiano, Dora



From:

Julie Fitch 🖥

Sent:

Monday, June 10, 2013 4:31 PM

To:

Anderson, Dave - BC; Hernandez, Alfonso - BC; Stevens, Jean - BC; Chimenti, Danette -

BC; mnrghatfield@yahoo.com; Nortey, James - BC; Oliver, Stephen - BC; Roark, Brian -

BC; Smith, Myron - BC; Jack, Jeff - BC

Cc:

Anguiano, Dora; Guernsey, Greg; Robertson, Jim; Leak, Erica

**Subject:** 

6/11 Item C1 - Downtown Density Bonus Program

Chairman Anderson and Planning Commissioners,

The Downtown Austin Alliance, an association of downtown property owners and businesses, has frequently questioned whether a density bonus program is a true incentive for density. But HR&A and City staff have determined that downtown residential projects can withstand fees of \$3-10 per square foot of bonus area, depending on location. The scale of future development projects will show whether this is acceptable. As you consider this program, we ask that you incorporate two amendments:

- Request that staff calibrate and codify the density bonus options other than affordable housing no later than the end of 2013.
- Designate all affordable housing fees generated by projects participating in the Downtown Density Bonus Program to build low-barrier, housing-first Permanent Supportive Housing.

In March 2010, Austin City Council set policy to create and operate 350 units of Permanent Supportive Housing (PSH), which provides permanent housing with case management and intensive services for people who are homeless. To date about 270 of the 350 units have been funded, many from the 2006 General Obligation Affordable Housing Bond, which has since been exhausted.

Despite the fact that we are well on our way to meeting the Council's four-year PSH objective, a void remains of low-barrier, housing-first PSH to serve people with the least resources and greatest barriers to housing, the *chronically* homeless. These people have experienced long-term homelessness and have disabling conditions. They cycle through our emergency shelters, criminal justice system, hospital emergency rooms, and emergency psychiatric facilities. Many PSH providers do not accept residents who have criminal histories or current substance abuse or mental health issues. However, low-barrier, housing-first PSH has been proven to provide long-term housing stability for the chronically homeless in a way that not only effectively addresses their needs, but also reduces the cost to the community to serve this population.

Again, we request that all downtown density bonus affordable housing fees be allocated for low-barrier, housing first PSH. We recommend this policy be reviewed in five years, and if the community has an adequate amount of this type of housing, the funds may then be directed to support other affordable housing needs.

Sincerely,

Julie Fitch
Director of Economic Development and Government Affairs
Downtown Austin Alliance
211 E. 7th Street, Suite 818
Austin, Texas 78701



To: Planning Commissioners

From: Mandy Dealey, Planning Commissioner 2005-2012

Chair, Waterfront Overlay Task Force, 2008



I can't be at your meeting, but there are a couple of things I want to bring to your attention in regard to the Paggi House case you are hearing tonight.

- When Zach Scott wanted to build their new theater, which violated the height limits for that part of the waterfront, there was a lot of concern that if that were granted, it would open the door for other tall buildings to be allowed in that sensitive area. But the Planning Commission, (and I was a member at that time) and later the City Council. agreed that Zach Scott is such a community asset, not just an amenity, that the additional height was granted. In doing so, however, there was a covenant made with the community that it was a unique situation and an exception, not a first step toward greater height. This understanding was so strong that the Council clearly instructed the City Manager that this was not to be considered a precedent for taller buildings in that area, and included that direction in the ordinance that granted the additional height for Zach Scott's new theater. I have attached that ordinance to this letter.
- Recognizing the unique character that makes Lady Bird Lake in irreplaceable asset for the City of Austin, the City Council commissioned the Town Lake Corridor Study, led by architect Larry Speck. It made specific recommendations about protecting the waterfront which were then codified and made a part of the Land Code for the City.

Over time, in a rewrite of the City Code, some of those protections seem to have been lost. As a result the Council formed the Waterfront Overlay Task Force which included, among others, current and former Planning Commissioners; I served as chair. Our recommendations emphasized the need for protection of the waterfront and led to the creation of the Waterfront Advisory Commission, whose charge it is to

Provide recommendations to the council and city boards that assist in promoting excellence in design, development and protection of the City's waterfront; and help provide harmonious interaction and transition between urban development and the parkland and shoreline of Lady Bird Lake and the Colorado River. Provide recommendations on: project-level recommendations regarding proposed development within the Waterfront Overlay (WO) combining district, as required under Section 25-2-715 (Review and Recommendation of the Waterfront Planning Advisory Board). Planning-level recommendations regarding proposed amendments impacting the WO combining district, as required under Section 25-2-715 (Review and Recommendation of the Waterfront Planning Advisory Board.) Section 2-1-187 of the City Code.

Specifically, in relation to the case you are considering tonight, I hope you will pay close to their recommendation not to grant any additional entitlements to this project. There is no way that ground floor retail and a contribution to the affordable housing fund can compensate for the loss of character at this critical intersection. And once it is lost, I don't know how it possibly can be retrieved or replicated.

I urge you, as strongly as I can, to keep faith with the community, for now and generations to come, and deny any additional entitlements to this project.

To: Planning Commissioners

From: Mandy Dealey, Planning Commissioner 2005-2012

Chair, Waterfront Overlay Task Force, 2008

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### ORDINANCE NO. 20080724-082

AN ORDINANCE AMENDING CITY CODE SECTION 25-2-531 TO CREATE A HEIGHT LIMIT EXCEPTION FOR FLY TOWERS ASSOCIATED WITH A PUBLIC PERFORMING ARTS THEATER.

### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-531 (Height Limit Exceptions) is amended to add a new Subsection (G) to read:

- (G) A fly tower that is constructed within a performing arts theater that seats 300 or more people may be up to 80 feet in height, regardless of the zoning district height limit, unless a lower height limit is required by City Code Chapter 25-2, Article 10 (Compatibility Standards) The fly tower must be
  - (1) located on land owned by the City of Austin, and
  - (2) designed and used for moving set pieces, lights, microphones, and other equipment on and off stage.
- PART 2. The city council finds that public performing arts theaters of sufficient size to include a fly tower for moving set pieces, lights, microphones and other equipment on and off stage generally provide significant community benefits
- PART 3. The city council directs the city manager not to consider the height of a fly tower granted a height exemption under Part 1 of this ordinance as a factor in any recommendation regarding height entitlements for structures in the surrounding area

PART 4. This ordinance takes effect on August 4, 2008.

PASSED AND APPROVED

, 2008	§ Will Wynn
APPROVED:  David Allah Smith  City Attorney	ATTEST: Mayor  Shirley A Gentry  City Clerk
Pag	e 1 of 1





### **MEMORANDUM**

TO:

**Planning Commission** 

FROM:

Lee Heckman, AICP

**Planning and Development Review Department** 

DATE:

June 11, 2013

SUBJECT: C14-2013-0058 & C14-2013-0059

Cedars Montessori School **Additional Correspondence** 

Attached please find additional correspondence relating to the proposed rezoning in these cases.

Lee Heckman, AICP

**Planning and Development Review Department** 



From: James Short

Sent: Monday, June 10, 2013 9:43 AM

To: Heckman, Lee

Subject: Cedars Montessori, CN: C14 2013 0058

Per our conversation this morning, my biggest concern about the proposed zoning change is the traffic on Rockwood Circle Drive where my property is located. The road is a dirt road and I have had numerous run ins with the school on blocking the road and I even called the sheriff's department once and the dust and traffic. It is my understanding that the school has approximately 170 students and there is limited parking on the lots. If they did expand after getting the zoning changed, it would greatly increase the dust, pollution and etc.

Please let me know that you received this e-mail. Thanks.

ORDINANCE NO.	



AN ORDINANCE AMENDING CHAPTER 25-2 (ZONING) OF THE CITY CODE TO AMEND CURE COMBINING DISTRICT REGULATIONS, REPEALING SECTION 25-2-586, ADDING A NEW SECTION OF THE CITY CODE RELATING TO DOWNTOWN DENSITY BONUSES AND ESTABLISHING THE DEVELOPMENT BONUS FEE AND SQUARE FOOTAGE FOR ON-SITE AFFORDABLE HOUSING.

### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

- **PART 1.** Section 25-2-312 of the City Code (CURE Combining District Regulations) is amended to add a new subsection (C) to read as follows:
  - (C) The CURE combining district may not be used to modify maximum floor area ratio or maximum height. within the area bounded by Martin Luther King, Jr., Boulevard, Interstate Highway 35, Lady Bird Lake and Lamar Boulevard.
- **PART 2.** Section 25-2-586 of the City Code (Affordable Housing Incentives in a Central Business District (CBD) or Downtown Mixed Use (DMU) Zoning District) is repealed and replaced with the following:

### § 25-2-586 DOWNTOWN DENSITY BONUS

- A. **Definitions.** In this section:
  - (1) PRIMARY ENTITLEMENT means the height and floor-to-area ratio FAR entitlement that a site derives from its current zoning. That entitlement may be derived from the base zoning or from a previous modification to the base zoning.
  - (2) BONUS AREA means the greater of:
    - (a) The gross floor area that exceeds the maximum allowable floor-to-area ratio ("FAR") allowed with the site's primary entitlements; or

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- (b) The gross floor area contained within that portion of a structure that exceeds the maximum height allowed under the site's primary entitlements.
- (3) FEE FLOOR means a dollar amount determined by multiplying applicable development bonus fee times the bonus area.
- (4) DEVELOPMENT BONUS FEE means the fee paid to the City for each square foot of bonus area that a project receives under this section.
- (5) GREAT STREETS STREETSCAPE STANDARDS means design standards for streets within the boundaries of the Great Streets Master Plan.
- (6) HABITABLE SPACE means interior square footage designed for people to live in and is measured from the inside surface of the demising or exterior walls of a unit.
- (7) MIXED-USE PROJECT means a project that has 25 percent or more of its floor area in a use different from a predominant use.
- (8) NON-RESIDENTIAL PROJECT means a project for which the predominant use is not listed in Section 25-2-3 (Residential Uses Described), and which has less than 25 percent of its floor area devoted to uses described in Section 25-2-3 (Residential Uses Described).
- (9) RESIDENTIAL PROJECT means a project for which the predominant use falls within one or more of the classifications described in Section 25-2-3 (Residential Uses Described).
- (10) URBAN DESIGN GUIDELINES means guidelines for public streetscapes, plazas, open space and buildings in a dense area, adopted by City Council.
- (11) DIRECTOR means director of the Planning Development and Review Department.
- B. Downtown Density Bonus Maps.

- (2) The amount of floor area ratio ("FAR") or height that may be achieved by a downtown density bonus for a site is limited by the maximum height or FAR identified on the, Downtown Density Program FAR and Height Map (Figure 2).
- (3) The development bonus fee may vary by use and downtown district. The applicable development bonus fee within each of the nine districts is shown on the Downtown Density Program Bonus Fee Table (Figure 3).

### (C) Program Requirements.

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- (1) Gatekeeper Requirements. To receive a Downtown Density Bonus, the director must determine that the project substantially complies with the Urban Design Guidelines.
  - (a) The applicant must submit to the director a schematic level site plan, building elevations, and other drawings, simulations or other documents necessary to fully describe the urban design character of the project and relationship of the project to its surroundings.
  - (b) The Design Commission shall evaluate and make recommendations regarding the project and the director shall consider comments and recommendations of the Design Commission.

### (2) Additional requirements.

- (a) After the director determines the applicant meets the gatekeeper requirements, the applicant shall provide sufficient information to determine the primary entitlement, bonus area and fee floor.
- (b) The applicant shall execute a restrictive covenant committing to provide streetscape improvements along all public street frontages, consistent with the Great Streets Standards.
- (c) The applicant shall execute a restrictive covenant committing to achieve a minimum two star rating under the Austin Energy Green Building program using the ratings in effect at the time the ratings

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- (D) Changes in Design of Proposed Building. If the design of a building changes after bonus is granted under this section, the director shall review the new design for substantial compliance with the Urban Design Guidelines prior to building permit approval. A building permit for a final design will not be approved until the design substantially compliances with the Urban Design Guidelines and the restricted covenant is amended to reflect the new community benefits.
- (E) Community Benefits. A person may achieve density bonuses by providing community benefits outlined in this section.
  - (1) Affordable Housing Community Benefits
    - (a) Affordable Housing Community Benefit. An applicant may use one or more of the following.
      - (i) On-site affordable housing. A project may achieve bonus area by providing on-site affordable housing within the project. The amount of bonus area that may be achieved for each one square foot of habitable space devoted to on-site affordable housing is established by separate ordinance. The city manager shall evaluate and, if necessary, adjust the development bonus fee at least every five years. The city manager shall determine the new fee amounts and submit those amounts to the city council for approval.
      - (ii) The project may achieve bonus area by paying a development bonus fee at the dollar per square foot amount ordinance. The fee will be paid into the Affordable Housing Trust Fund.
    - (b) Affordable housing community benefit percentages.
      - (i) A project must achieve at least 50 percent of the desired bonus by providing on-site affordable housing, paying an affordable housing fee, or a combination of the two.

- (ii) If an applicant chooses to achieve 100 percent of the desired bonus area exclusively by providing affordable housing community benefits, the approval for the bonus area can be granted administratively by the director.
- (iii) For any portion of the desired bonûs area not achieved by providing affordable housing community benefits, the applicant can seek to achieve bonus area by providing other community benefits. City Council must approve the bonus area if the applicant provides other community benefits.

### (2) Other Community Benefits.

- (a) If the applicant proposes to achieve bonus area by providing other community benefits, the applicant must provide sufficient information about those other community benefits for the director to determine that the other community benefits serve a public and municipal purpose and do not impose a significant burden on public resources.
- (b) The director will consider the following to make a determination:
  - (i) if members of the general public will be able to enjoy the proposed benefit without paying for its access, use or enjoyment;
  - (ii) if the proposed benefit will connect to and be accessible from public right of way or other publicly-accessible space;
  - (iii) if the proposed benefit will provide a public amenity that is particularly lacking in the proposed location;
  - (iv) if the proposed benefit will impose a significant burden on public resources; for maintenance, management, policing, or other reasons; and,
  - (v) any other information provided by the applicant that shows the other benefit serves a public and municipal purpose and furthers the City's comprehensive planning goals.

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- (c) If a community benefit provides a partial benefit to a project, it will not be disqualified from being considered, the director will allocate only the cost of the public portion of the benefit to other community benefits.
- (3) If the director determines that the proposed benefit qualifies as a community benefit, the director shall:
  - (a) quantify the monetary cost of the project for the proposed community benefit; and
  - (b) determine the cost to be applied towards achieving the desired bonus area.
- (4) The amount determined by the director may be applied to achieve bonus area on the same basis as the development bonus fee applicable to the type and location of the project.
- (5) The director's recommendation concerning the proposed community benefit and the monetary value that is applied to achieve the bonus area shall be presented to the planning commission for recommendation and the city council for approval.

### (F) Development Bonus Fee.

- (1) The development bonus fee is established and adjusted by ordinance. The city manager shall evaluate and, if necessary, adjust the development bonus fee at least every five years. The city manager shall determine the new fee amounts and submit changes to the city council for approval.
- (2) Mixed-use projects shall pay development bonus fees in proportion to the amount of floor area in the project that is devoted to different use categories.
- (G) Affordability Requirements. For purposes of this section, a unit is affordable for purchase or rental if, in addition to the other requirements of this section, the household is required to spend no more than 30 percent of its gross monthly income on mortgage or rental payments for the unit.
  - (I) Affordability requirements for owner-occupied units.

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- (a) On-site for sale affordable housing units shall be reserved as affordable through a City approved affordable housing land trust or other shared equity model approved by the director of Neighborhood Housing and Community Development, for not less than 99 years from the date a certificate of occupancy is issued.
- (b) The units shall be made available for ownership and occupancy by households earning no more than 120 percent of the Annual Median Family Income for the City of Austin Metropolitan Statistical Area as determined by the director of Neighborhood Housing and Community Development.
- (2) Affordability requirements for rental units.
  - (a) On-site rental affordability housing units shall be reserved as affordable for a minimum of 40 years following the issuance of the certificate of occupancy.
  - (b) The units shall be made available for rental by households earning no more than 80 percent of the annual median family income for the City of Austin metropolitan statistical area as determined by the director of Neighborhood Housing and Community Development.
- (H) Applicants obligations. Before the director may issue any type of Certificate of Occupancy, all obligations must be fulfilled, including payments of fees and execution of a restrictive covenant (including all commitments made as part of gatekeeper requirements or community benefits provided). All approvals must be obtained and evidence of the approvals must be provided to the director prior to site plan submittal.
- (I) Director's approval. Once an applicant meets the requirements of the downtown density bonus program, the director will issue a notice of approval, that will indicate the project's allowable FAR and height.
- (J) Appeal.
  - (1) An applicant may appeal director's determination to the city council.

2	(2)	Applicant must appeal denial.	the determinatio	n within 30 days from	m the date of
5 4 5	(3)	An appeal is subject to Commission Public Hearing Council Zoning Hearing	earing and Recon	nmendation) and §25	2 (Land Use 5-2-283 (City
7 8 9 10 11	as shown in 25-2 Figure 3.	e to be paid into the affo 2-586 section B to the Do	ordable housing to	rust fund for each bo	onus square foot established in
12 13 14 15	PART 4. The o granted for each 586(E)(1)(a).	on-site affordable housing one square foot of on-sit	g bonus is ten sq te affordable hov	uare feet of bonus ar ising as defined in 2.	ea shall be 5-2-
16 17	PART 5. This of	ordinance takes effect on			, 2013.
18 19		APPROVED	§ §		
22		, 2013	§ §		
23 24 25				Lee Leffingwell Mayor	
26 27	APPROVED:		ATTEST:		
28 29		Karen M. Kennard City Attorney		Jannette S. Goo City Clerk	odall

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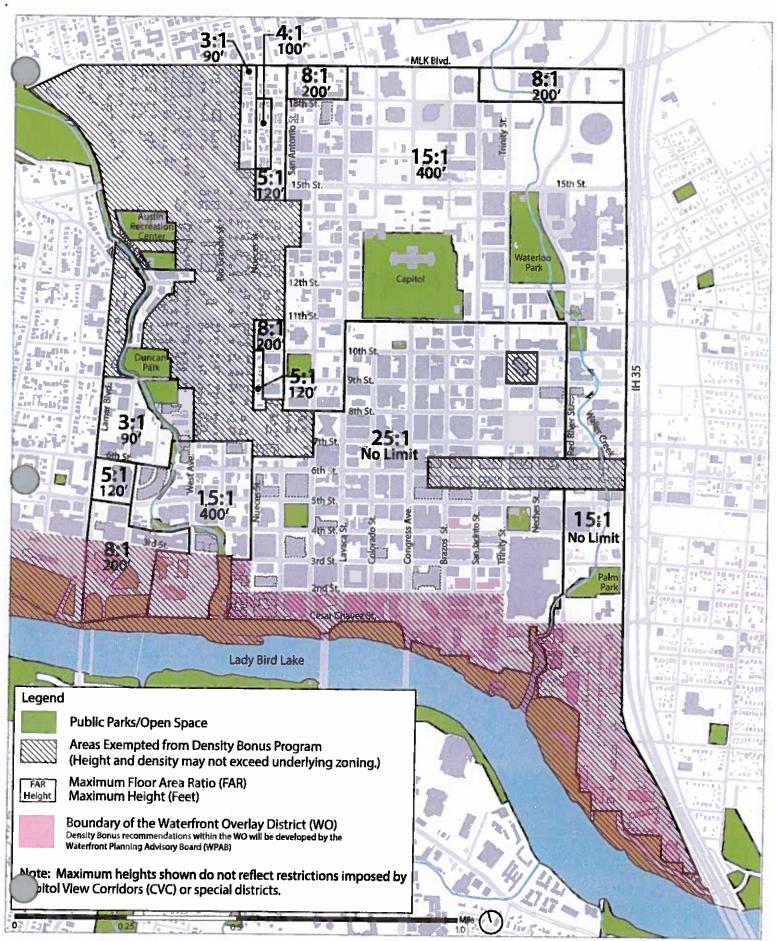
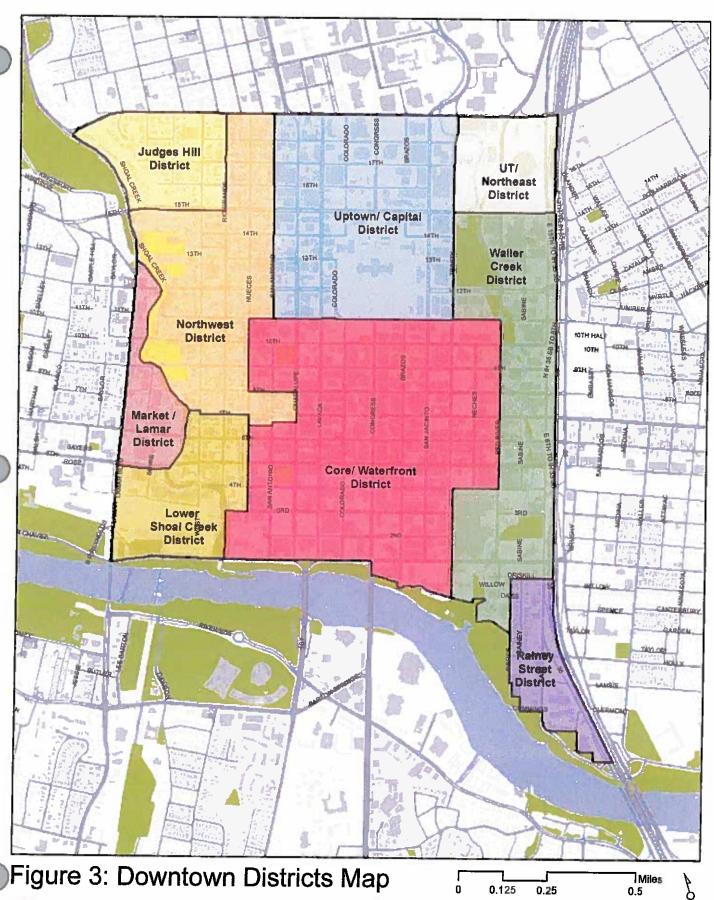


Figure 1: Downtown Density Bonus Program - Eligibility, Floor Area Ratio (FAR) and Height Map

Figure 2: Downtown Development Bonus Fee Table

Development Type	Downtown District	Development Bonus Fee (\$/SqFt Bonus Area)
Residential	Core, Lower Shoal Creek & Rainey	\$10/SqFt Bonus Area
	All other districts	\$3/SqFt Bonus Area
Office	All districts	No Fee
Hotel	All districts	No Fee

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